IN THE HIGH COURT OF JUDICATURE OF
ANDHRA PRADESH
AT HYDERABAD

THE HON'BLE MR. JUSTICE B.PRAKASH RAO

AND

THE HON'BLE MR. M.VENKATESWARA REDDY

WRIT PETITION NO. 2164 OF 2006

Between:

Metukapally Ram Reddy and others

Petitioners

AND

Sepcial Court under A.P. Land Grabbing (Prohibition)
Act, Rep. By its Registrar, at Hyderabad and others

Respondents

ORDER:
(Per the Hon'ble Sri Justice B.Prakash Rao)

The petitioners herein seek a writ of certiorari assailing the judgment in LGC No. 44 of 2002 dated 19.12.2005 on the file of the Special Court under A.P. Land Grabbing (Prohibition) Act, Hyderabad (for brevity the Special Court) declaring them as the land grabbers and allowing the application filed by the respondents 2 and 3 herein purported to be under Sec. 8(1) of the A.P. Land Grabbing (Prohibition) Act (for brevity the Act) in respect of an extent of Ac.5.00 in Sy. No. 10 of Pocharam village, Ghatkesar Mandal, Rangaredy District.

Mr. Vedula Venkataramana, learned counsel appeared for the petitioners and Mr. K. Raghuveer Reddy, learned counsel appeared for the contesting respondents 2 and 3.

Briefly stated, the facts of the case are that the respondents 2 and 3 in their aforesaid application came out with a case that the said land has been illegally grabbed by the petitioners without any right, title or interest whatsoever. According

to them, father of the respondents 2 and 3 namely Mr. Pedda Venkat Reddy, was initially owning and possessing an extent of Ac.50.00 of land, out of the total extent of Ac.245.29 guntas in the said Sy. No. 10 and the same has been duly recorded in the revenue records in his name as owner and possessor. The said Pedda Venkat Reddy, died in the year 1978 and the respondents 2 and 3 succeeded to the property and they continued to remain in possession. It is also stated that in the year 1979, passbooks were issued recognizing them as owners and possessors. Out of the total extent of Ac.50.00, an extent of Ac.45.00 was sold to A.P. Housing Board Corporation and thereby retaining the balance extent of Ac.5.00 of land, which is the subject matter of the present proceedings. The petitioners herein who are neighbouring owners in the same Sy. No., grabbed the schedule property without any valid claim or right. Hence, the application.

Contesting the case, the respondents 2 and 3, the petitioners set up their claim in the counter, to the effect that the total extent of Ac.245.29 guntas was partitioned among the shareholders, which includes the ancestors of the respondents 2 and 3 as well that of the petitioners herein, whereby each of these ancestors were allotted Ac.45.00 of land. In the year 1982, the A.P. Housing Board purchased Ac.45.00 of land from the respondents 2 and 3 and Ac.25.00 from the petitioners herein. Out of the balance Ac.20.00, the petitioners sold away Ac.4.00 to private parties retaining Ac.15.00. Therefore, according to the petitioners, the respondents 2 and 3, in fact, have no property left. Under the guise of present application, the respondents 2 and 3 are trying to grab the property. That apart, it is pointed that the petitioners had earlier filed suit OS No. 105 of 1991 on the file of the I Addl. Senior Civil Judge, Rangaredy District, against the A.P. Housing Board, where the respondents 2 and 3 are also defendants 5 and 6 and it is pleaded that it is only an extent of Ac.45.00, which has been allotted to their father. The said suit was decreed in favour of the petitioners herein and it remained unchallenged. However, the appeal preferred by the A.P. Housing Board in AS No. 421 of 2001, is pending on the file of this Court. Subsequently, in pursuance of the aforesaid decree, the A.P. Housing Board, conducted panchanama with the assistance of Survey Officials and demarcated the total land of Ac.16.00 belonging to the petitioners and delivered possession and their name is duly recorded in the revenue records. Thus neither the names of the respondents 2 and 3 are recorded in the pahanies for the years 2000-2001 nor the pahanies filed by them contain

their shares, as claimed by them. Therefore, the application filed by the respondents 2 and 3 is liable to be dismissed.

The respondents 2 and 3 separately filed rejoinder and sought once again to explain that the petitioners herein had in fact sold away Ac.25.00 acres out of Ac.50.00 of land to the A.P. Housing Board and they themselves have given Ac.45.00 to the Housing Board retaining Ac.5.00. Further the petitioners herein have sold another extent of Ac.4.00 to Mr. Ilaiah and Mr. Laxmaiah and 9 acres 13.5 guntas to Giri Reddy and Vasudeva Reddy and the petitioners further sold an extent of Ac.0.26 guntas in favour of one Ms. Shoba Rani. Therefore, after all such alienations, the extent of land which should remain with the petitioners should be only Ac.11.00 and the very fact that they claimed ownership and possession over an extent of Ac.16.00, on the face of it would show that they have grabbed additional Ac.5.00 of land, which is wholly unsustainable. The pattedar passbook issued during the year 1978-1979 shows the possession of the respondents 2 and 3 over Ac.50.00. Even in the suit OS No. 105 of 1991, the schedule property therein is totally different, which involves Ac.10.31 guntas and yet the petitioners got panchanama conducted for an extent of Ac.16.00, which is totally unexplainable and unsustainable. Hence the petitioners need be declared as land grabbers.

On these and other detailed allegations, as contained in the respective pleadings, the Special Court framed the issues; namely,

1. Whether the applicants have title to the application schedule property?
2. Whether the rival title set up by the respondents is true, valid and binding?
3. Whether the respondents are land grabbers within the meaning of Act XII of 1982?
4. To what relief?

Thereafter, the parties went into detailed comprehensive enquiry where, on behalf of the respondents 2 and 3, PW-1 was examined and Exs. A-1 to A-15 were marked; whereas on behalf of the petitioners herein, RW-1 was examined and Exs. B-1 to B-31 were marked.

On detailed appraisal and consideration of evidence and material on record, the Special Courts found that the petitioners are the land grabbers and ultimately

allowed the application filed by the respondents 2 and 3.

Hence the present writ petition.

Sri Vedula Venkataramana, learned counsel appearing on behalf of the petitioners, by taking through the entire evidence and material available on record, primarily sought to contend that the respondents 2 and 3 did not establish that an extent of Ac.50.00 fell to their respective share nor they have made out any case or that there was such a plea at any point of time earlier and they being party to the suit filed by them in pursuance of which panchanama was conducted with the assistance of Survey Officials, it is not open for the respondents 2 and 3 to claim that the petitioners are land grabbers. Therefore, according to them, the applicants have totally failed to make out any case, especially having regard to the fact that they sold the entire extent of Ac.45.00 allotted to them and nothing remains with them. Even otherwise, by taking into account the totality of the circumstances and in the background of these chequered events, the act alleged against the petitioners, would not, in any way, amount to land grabbing, as contemplated under the provisions of the Act. Further it was also contended that there is no proper enquiry nor proper issues were framed with regard to the disputed aspects. If there being any land grabbing and even if any such act is there on the part of the petitioners, it amounts to trespass or encroachment or otherwise, the Special Court constituted under the provisions of the Act, would not have any jurisdiction and, hence, the application is liable to be dismissed.

Sri K.Raghuveer Reddy, the learned counsel for the respondents 2 and 3, repelling the aforesaid contentions, in trying to sustain the findings of the Special Court, sought to point out that there is clear cut suppression on the part of the petitioners themselves in regard to the area which as been sold to the third parties and there being absolutely no explanation whatsoever nature of worthy consideration, in regard to the delivery of possession in respect of Ac.5.00 of land when the suit itself is for a lesser area, the case has been perfectly made out that the petitioners have grabbed the land and, therefore, the application has been rightly filed and rightly allowed.

Further, it is also contended that the case of the parties is to the effect that the land which has been partitioned is Ac.50.00, and as is evident from the various documents and as found by the Special Court, the findings are purely on facts and

this Court would not venture to contradict with the impugned order in exercise of the powers under Article 226 of the Constitution of India.

With these and other allegations, as contended across the Bar and on perusal of the material on record, the point that arises for consideration is whether, in the facts and circumstances of the case, the petitioners can be declared as land grabbers in respect of the schedule property?

From the above facts and the material on record, there is no serious dispute with regard to the basic facts to the effect that originally the total extent of land was Ac.245.29 guntas in Sy. No.10 of Pocharam village, which had been partitioned among two branches, though there is dispute in regard to the area which has been allotted i.e. to an extent of Ac.45.00 or Ac.50.00. Another undisputed fact is that the petitioners have sold an extent of Ac.25.00 of land to the A.P. Housing Board and the respondents 2 and 3 have sold an extent of Ac.45.00. It is also evident and admitted position, which had gone unnoticed and unexplained before the Special Court or even before this Court, in regard to the various alienations made by the petitioners. Thus, it has remained un-assailed. There is no dispute in regard to the fact that the petitioners sold an extent of Ac.25.00 in favour of the A.P. Housing Board and the respondents 2 and 3 have sold an extent of Ac.45.00 retaining Ac.5.00. It is also not in dispute that an extent of Ac.4.00 was sold by the petitioners to Mr. Ilaiah and Mr. Lamaiah and an extent of 9 acres and 13.5 guntas in favour of Giri Reddy and Vasudev Reddy and further sold an extent of Ac.0.26 gutnas in favour of Ms. Shoba Rani. There is no dispute to the fact that the petitioners themselves have filed OS No. 105 of 1991, where the subject matter of the property was Ac.10.31 guntas. The respondents 2 and 3 are parties to the said proceedings and there was no serious contest in regard to the area. However, panchanama had been conducted by the A.P. Housing Board with the assistance of Survey Officials to an extent of Ac.16.00. Originally, the petitioners claimed the above land, which has been claimed in the suit. No doubt, on a reading of the entire evidence and appraisal of the entire material on record, the Special Court has rightly found that the petitioners did not have any say in regard to the aforesaid alienations nor even in regard to the delivery of possession over an extent of Ac.16.00, when the suit schedule land is only Ac.10.31 gutnas.

On behalf of both sides, each one has examined one witness explaining

their respective case in detail, apart from marking other documents. The Special Court found that Ex.A-2, which is ROR proceedings, shows an extent of Ac.50.00 as owned by the respondents 2 and 3. Similarly, Exs. A-5 and A-6 also show that an extent of Ac.25.00 land each in Sy. No. 10. By referring Exs. A-8 and 11, which include pattedar passbook and other title documents, in the name of M. Damodar Reddy, it was recorded that the respondents 2 and 3 and applicants are in possession of Ac.50.00. Further, Exs. A-13 and A-14, which are pahanies, also show the possession of Ac.50.00 of land by them. These are the pahanies, which are also relied on by the petitioners themselves in the very suit OS No. 105 of 1991, which are marked as Exs. B-13 to B-27. Therefore, on appraisal of not only the oral evidence, but supported by the aforesaid documents, revenue entries, it was found that Ac.50.00, which has been allotted to each and not Ac.45.00.

As already pointed out, there has been no denial in respect of the alienations, as mentioned above, in regard to Ac.25.00, Ac.4.00, Ac.0.26 guntas and 9 Acre 13.5 guntas, even during the course of arguments in this court. Nothing has been pointed out specifically explaining these areas. Even in regard to the additional area, which has been given possession, in pursuance of the decree against the A.P. Housing Board also, no explanation is forthcoming nor any justification is sought to be made from out of the evidence on record. Therefore, ultimately, having regard to the evidence, the Special Court has rightly concluded that in their own suit, the extent is Ac.10.31 guntas, which remained with them, but not over and above that extent and any additional or extra area is not justified. In the background of this set of factual circumstances, there is total silence on the part of the petitioners and no justification is being pointed out, the Special Court found that the petitioners are land grabbers.

As regards the definition under the provisions of the Act, land grabbing means any activity of grabbing of any land whether belonging to the Government, a local authority, a religious or charitable institution or endowment, or any other private person, by a person or group of persons, without any lawful entitlement and with a view to illegally taking possession of such land.

Therefore, there cannot be gainsaying, there is no fall back on the common law approach to say that at the most, it amounts to encroachment, trespass or illegal occupation, which would not come within the definition of land grabbing.

Even as per the provisions of the Act, under Sec. 10, burden heavily lies on the petitioners herein, who have been alleged to be land grabbers, to prove that they are not land grabbers and amply justify their valid title and interest in respect of the said land by cogent evidence and substantial material. In the absence of any such proper justification forthcoming and material to support, it naturally follows that they are land grabbers. Even on this aspect, there is no explanation forthcoming, as the petitioners have made alienations to third parties and no rebuttal evidence is forthcoming to get over the situation or making claim in respect of the land over and above Ac.11.00 to justify their claim for Ac.5.00. It is not their case that they are having any other area over and above Ac.50.00, which was allotted to them. In the circumstances, on the findings of fact, the petitioners have to directly justify their stand supported by documents.

In view of the same, this court would not be in a position to re-appreciate the same and come to a different conclusion, as there is no perversity or want of reasons or that the material is insufficient.

Hence, we do not find any merits in the writ petition. Consequently, the writ petition fails and is accordingly dismissed.

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B.Prakash Rao, J.

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M.Venkateswara Reddy, J.

April 20th , 2007
MAS